# Koperasi Serbausaha Makmur Bhd (KOSMA) v Jamil bin Ninggal & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-154–04 OF 2016
ALIZATUL KHAIR, NALLINI PATHMANATHAN AND ZABARIAH YUSOF JJCA
18 APRIL 2018

*Labour Law — Employment — Termination — Challenge of termination before Industrial Court — Adjournment of Industrial Court proceedings — Referral by Malaysia Co-Operative Societies Commission for adjudication before co-operative tribunal — Whether Commission acted out of jurisdiction — Co-Operative Societies Act 1993*

The respondents were the employees of Ladang Gajah Jinak, a plantation owned by the appellant ('KOSMA'). When the respondents' employment was terminated, they: (a) claimed that the termination was wrongful; and (b) made claim based on defamation against KOSMA. The dispute was first brought to the Industrial Court but later withdrawn and was adjudicated by a co-operative tribunal to be set up by the third respondent. KOSMA then commenced judicial review proceedings at the High Court to quash the decision of the third respondent, in accepting for adjudication. The High Court dismissed the said application by KOSMA. Hence, the present appeal on the grounds that: (i) the respondent failed to obtain the consent of the Minister of Human Resources before referring their complaint to the third respondent, in contravention with s 83 of the Co-Operative Societies Act 1993 ('the Act'); (ii) the third respondent had acted ultra vires in the exercise of its powers under the Act in referring the matter to the co-operative tribunal; (iii) the respondents were abusing the process of court by submitting themselves to the jurisdiction of the Industrial Court but withdrew in order to start over afresh in another forum; and (iv) the Industrial Court was the proper forum to adjudicate on this dispute.

**Held,** allowing the appeal:

(1) Section 82(1)(c) has to be read as a whole. When this is done, it is evident that the purpose of this section is to resolve disputes relating to the affairs of a co-operative society within a limited category of persons. These categories do not include ex-officers of the society. It only covers subsisting officers. The respondents' dispute related to their employment

The Commission had acted outside the scope of its powers as prescribed by the Act. It acted in excess of its jurisdiction in referring the matter to the co-operative tribunal (see paras 40–41).

**[Bahasa Malaysia summary**

Responden-responden adalah pekerja Ladang Gajah Jinak, sebuah ladang yang dimiliki oleh perayu ('KOSMA'). Apabila perkhidmatan responden ditamatkan, mereka: (a) mendakwa bahawa penamatan adalah salah; dan (b) membuat tuntutan berdasarkan fitnah terhadap KOSMA. Pertikaian tersebut, pada asalnya, dibawa ke Mahkamah Perusahaan tetapi kemudian ditarik balik dan diadjudikasi oleh Tribunal Koperasi yang ditubuhkan oleh responden ketiga. KOSMA kemudian memulakan prosiding semakan kehakiman di Mahkamah Tinggi untuk membatalkan keputusan responden ketiga, dalam menerima adjudikasi. Mahkamah Tinggi menolak permohonan tersebut oleh KOSMA. Oleh itu, rayuan ini atas alasan: (i) responden gagal mendapatkan kebenaran Menteri Sumber Manusia sebelum merujuk aduan mereka kepada responden ketiga, bertentangan dengan s 83 Akta Koperasi 1993 ('Akta'); (ii) responden ketiga telah bertindak ultra vires dalam menjalankan kuasanya di bawah Akta dalam merujuk perkara itu kepada tribunal koperasi; (iii) responden menyalahgunakan proses mahkamah dengan berserah pada bidang kuasa Mahkamah Perusahaan tetapi kemudian menarik balik untuk memulakan prosiding baharu di forum lain; dan (iv) Mahkamah Perusahaan adalah forum yang sesuai untuk menilai pertikaian ini.

**Diputuskan**, membenarkan rayuan:

(1) Seksyen 82(1)(c) hendaklah dibaca secara keseluruhan. Apabila ini dilakukan, adalah jelas bahawa tujuan seksyen ini adalah untuk menyelesaikan pertikaian yang berkaitan dengan hal ehwal koperasi dalam kategori-kategori orang yang terbatas. Kategori ini tidak termasuk bekas pegawai koperasi. Ia hanya meliputi pegawai-pegawai yang berkhidmat. Pertikaian responden-responden adalah berkaitan dengan pekerjaan mereka Suruhanjaya telah bertindak di luar skop bidang kuasanya sebagaimana yang ditetapkan oleh Akta. Ia bertindak melebihi bidang kuasanya dalam merujuk perkara itu kepada tribunal koperasi (lihat perenggan 40–41).]

**Notes**

For cases on termination in general, 8(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 1490–1504.

**Cases referred to**

*Co-Operative Central Bank Ltd & Ors v Additional Industrial Tribunal, Andhra*

*Pradesh, Hyderabad* 1970 AIR 245, SC (refd)
*Deccan Merchants Co-operative Bank Ltd v Dalichand Jugraj Jain and Ors* AIR 1969 SC 1320, SC (folld)
*M Arulandan v Malaysian Co-operative Insurance Society Ltd* [1987] 1 MLJ 485, SC (distd)
*MS Madhava Rao and Ors v DVK Surya Rao, Member Of The* AIR 1954 Mad 103, HC (refd)
*On bin Long & Ors v Romeli bin Dollah* [2014] MLJU 1914; [2014] 7 CLJ 371, CA (refd)

**Legislation referred to**

Bombay Co-Operative Societies Act 1925 [IND]
Co-Operative Societies Act 1948 (repealed by Co-Operative Societies Act 1993) s 49(1)
Co-Operative Societies Act 1993 ss 82(1), (1)(c), (5), 83, 83(1)
Industrial Relations Act 1967
Malaysia Co-Operative Societies Commission Act 2007

**Appeal from:** Application for Judicial Review No 25–134–07 of 2014 (High Court, Kuala Lumpur)

*Harjinder Singh (Premjit Singh with him) (Sabarudin Othman & Ho) for the appellants.*
*Nazri Ibrahim (Haranay Hisham Anikah) for the first and second respondents.*
*Baizura Kamal (Suruhanjaya Koperasi Malaysia) for the third respondent.*

**Nallini Pathmanathan JCA:**

INTRODUCTION

**[1]** This appeal arises from the decision of the High Court dated 16 June 2016 dismissing the appellant's application for judicial review. In their application, the appellant, a co-operative society named Koperasi Serbausaha Makmur Bhd ('KOSMA'), had sought orders of certiorari as well as declaratory relief pertaining to the decision of the Suruhanjaya Koperasi, the third respondent ('the Commission') to refer the complaints of the respondents ('the respondents') of wrongful dismissal and defamation, to a tribunal ('tribunal') to be adjudicated upon. The certiorari order and declaratory relief sought is much in the same vein, namely that the respondents' complaints to the tribunal relating to wrongful dismissal, be set aside or declared illegal and void.

**[2]** The singular points of significance in this appeal relate to the following issues:

A (a) when the employment of an employee of a co-operative society is terminated, resulting in a dispute, is the Commission conferred with the jurisdiction by the Co-Operative Societies Act 1993 ('the Act'), to determine such a dispute relating to a complaint of wrongful termination of employment?

B (b) this turns on the construction to be accorded to s 82(1) of the Act, more particularly the phrase 'a dispute touching on the management or business' of the co-operative society, KOSMA. The precise issue requiring determination is whether the phrase 'a dispute touching on the C management or business' includes the settlement or adjudication of disputes relating to the wrongful termination of employment of co-operative society employees, as in the case with the respondents here;

(c) the High Court, relying on the Supreme Court decision of *M Arulandan v Malaysian Co-operative Insurance Society Ltd* [1987] 1 MLJ 485 D ('Arulanandan'), held that the 'dispute', namely the complaints of wrongful termination by the respondents, fell within the ambit of the phrase 'a dispute touching on the management or business'. The effect of the High Court's decision was to find that the third respondent *is* clothed E with jurisdiction to determine or adjudicate upon claims of wrongful termination of employment by officers and/or employees of KOSMA. Accordingly KOSMA's judicial review application, which was premised on the contention that the Commission had no such jurisdiction or power, failed. The dispute was to be determined by a tribunal set up F pursuant to a recommendation by the Commission to the Minister under s 83 of the Act;

(d) we determined and held otherwise, namely that the complaints of wrongful termination or unfair dismissal of employment of the respondents do not fall within the purview of the phrase 'dispute G touching on the management or business' of the co-operative society. The net result of our decision was to hold that the Commission did not possess jurisdiction over disputes of this nature. It was not therefore empowered to either deal with the dispute itself, or to refer the dispute to the tribunal established under s 83(1) of the Act to resolve or adjudicate H upon the dispute;

(e) we reached this decision for a few reasons. First, we concluded that the facts of the present case are distinguishable from *Arulanandan* because in that case the employee lodged a grievance in respect of disciplinary action I taken against him by the co-operative society. However his employment was never terminated and he remained at all times an officer of the co-operative society/company. He only sought relief against disciplinary action. To that extent, the case was distinguishable;

(f) we were further persuaded by the fact that *Arulanandan* was decided

(particularly in relation to the interpretation to be accorded to the phrase 'dispute touching on the management or business') by reliance on the Madras High Court decision of *MS Madhava Rao and Ors v DVK Surya Rao, Member Of The* AIR 1954 Mad 103 ('Madhava Rao'). In that case, the Indian equivalent provision of our s 82(1)(c), (in pari materia with our provision) was accorded a wide or broad construction. Adopting the same approach, the Supreme Court led by Wan Suleiman SCJ, determined by a majority, that the phrase was to be broadly construed. George Seah SCJ dissented;

(g) it was held that the dispute relating to whether the disciplinary procedures implemented by the Chief Executive amounted to a contravention of the relevant co-operative regulations, was a domestic dispute. It related to the internal administration of the co-operative society. The phrase 'dispute touching the business of a registered society' was therefore wide enough to accommodate such a dispute, and it should be referred to the then Registrar General of Co-Operative Societies under the then s 49(1) of the Co-Operative Societies Act 1948;

(h) it is clear that in *Arulanandan*, the dispute related to domestic or internal disciplinary proceedings. Arulanandan's grievance was against the imposition of the proceedings and the punishment meted out. But Arulanandan did not leave the employ of the co-operative society. He remained an officer, even after the disciplinary proceedings. To that extent it is clear that his grievance with regards to his employment remained an internal matter of the co-operative society. The adoption of a 'broad' approach in the construction of the words 'touching ... the management or business' of a co-operative society to encompass a domestic disciplinary proceeding is, with great respect, entirely correct;

(i) another relevant point worth mention is that the Indian High Court case of *Madhava Rao* which prescribed that a broad construction be accorded to the phrase 'touching the business of a registered society' had in fact been overruled by the Indian Courts in the case of *Co-Operative Central Bank Ltd & Ors v Additional Industrial Tribunal, Andhra Pradesh, Hyderabad* 1970 AIR 245 ('Co-Operative Central Bank'). In *Co-Operative Central Bank*, the learned judges relied in turn upon an Indian Supreme Court decision namely *Deccan Merchants Co-operative Bank Ltd v Dalichand Jugraj Jain and Ors* AIR 1969 SC 1320 ('Deccan Merchants') where the Supreme Court of India determined that a narrow construction or definition was to be accorded to the phrase 'touching on the business';

(j) the word 'dispute' it was reasoned, was subject to a limitation, namely, to disputes capable of being resolved by the registrar. As the dispute in

question in *Deccan Merchants* was between a landlord and tenant, it was doubtful that that the word 'dispute' in the equivalent Indian legislation relating to co-operatives, encompassed such a matter. There was specific legislation to deal with a landlord and tenant dispute;

(k) in like manner we were of the view that in Malaysia the Industrial Relations Act 1967 provides specific legislation dealing with disputes pertaining to unfair dismissal. To that extent we were of the view, with the greatest of respect, that the phrase 'touching on the business' and 'dispute' in s 82(1)(c) ought to be accorded a narrow construction or definition, as it did not appear to be within the contemplation of the legislature to confer jurisdiction on the third respondent to adjudicate upon, and grant reliefs such as reinstatement or arrears of wages, in respect of grievances of unfair dismissal. This more properly fell within the regime of the Industrial Relations Act 1967;

(l) we therefore allowed KOSMA's appeal, set aside the decision of the High Court and allowed the application for judicial review. The net consequence of our decision is that the Commission's decision to refer the respondents' dispute to such a tribunal is quashed. The Commission acted ultra vires or in excess of its jurisdiction in making such a reference because it was not, on our construction of s 82(1)(c), conferred by Parliament with the jurisdiction to refer a dispute relating to wrongful dismissal of officers of a co-operative society to a tribunal for adjudication. Such a dispute is not a domestic or internal matter of the co-operative; and

(m) when we delivered our decision we afforded the parties the thrust of our reasons for the decision we made. We now set out our full grounds.

## ESSENTIAL BACKGROUND FACTS

**[3]** The factual matrix leading up to this case relates to the termination of the employment of one Jamil bin Ninggal and one Mohd Shaidi bin Mohd Salleh ('the respondents') who were, at the material time in 2009, employees of Ladang Gajah Jinak, a palm oil plantation ('the plantation'). The appellant, Koperasi Serbausaha Makmur Bhd ('KOSMA') is the owner of the plantation.

**[4]** The respondents claim that the termination of their employment was wrongful. Apart from wrongful termination, the respondents also made claims founded on defamation against KOSMA.

**[5]** KOSMA, the appellant, is a co-operative society established under the Act.

**[6]** The respondents were employees of KOSMA until their termination in June 2009. They remain members of KOSMA. A

**[7]** The third respondent is a governing body tasked under the Act to oversee and exercise powers of supervision over all co-operative societies under the Act and the Malaysia Co-Operative Societies Commission Act 2007. B

**[8]** KOSMA employed the respondents as senior supervisor and farm manager respectively, at the plantation.

C

**[9]** On 12 January 2009 KOSMA received a report from the managing agent for the plantation, one BUDI-JS Plantation Management Sdn Bhd ('the managing agent'), that there were irregularities in payments to contractors, breaches of procedure and mismanagement of the plantation. A visiting agent confirmed that there were irregularities and mismanagement. D

**[10]** KOSMA then conducted an internal audit. A management audit team was tasked to investigate the contents of the report by the management agent and to review the operations of the plantation. The management audit report concluded that there was indeed misconduct in the management of the plantation. E

**[11]** KOSMA then suspended the respondents. Show cause letters were issued to the respondents, to which they provided explanations. KOSMA deemed their replies unsatisfactory and terminated their employment on 1 June 2009. F

**[12]** The respondents each lodged a complaint with the Minister of Human Resources. After conciliation failed, the complaints were referred to the Industrial Court in Kuala Lumpur. The two claims of dismissal without just cause or excuse were duly consolidated and the matter proceeded to trial on 27 August 2013. G

**[13]** However, on 9 April 2014, when KOSMA's sixth witness was due to continue testifying before the Industrial Court, the respondents requested an adjournment because they wished to refer their claims to the co-operative tribunal. They contended that the industrial court had no jurisdiction to hear the matter. The industrial court adjourned the hearing. H

**[14]** Subsequently, the respondents informed the industrial court that the co-operative tribunal had accepted their case for adjudication. This meant that: I

A (a) the respondents had referred their 'dispute' with KOSMA to the Malaysia Co-Operative Societies Commission ('the third respondent'); and

(b) the third respondent had determined that the 'dispute' fell within the purview of s 82(1) of the Act, in so much as it 'touched on the management or business of a co-operative society'. Such a 'dispute' therefore warranted resolution by way of reference to a co-operative tribunal. It had accordingly referred the 'dispute' for such adjudication before a co-operative tribunal.

**[15]** The respondents then sought to withdraw their grievances being adjudicated in the industrial court. Despite objections from KOSMA, the complaints brought by the respondents in the industrial court were withdrawn. This in turn meant that the 'dispute' would have to be adjudicated upon afresh by a co-operative tribunal to be set up by the third respondent.

**[16]** KOSMA therefore commenced judicial review proceedings to quash the decision of the third respondent, in accepting for adjudication, the claim of wrongful termination made by the respondents.

**[17]** The High Court heard KOSMA's application for judicial review against the decision of the third respondent. It dismissed the application on 30 March 2016. Hence the present appeal.

**[18]** We first heard parties on 1 March 2017 and subsequently on 3 March 2017. We directed parties to file additional submissions by the end of March on the issue of the jurisdiction and/or provisions of the Co-Operative Societies Act 1993 which enabled the third respondent to make such an order for a reference of the respondents' 'dispute' for wrongful termination of employment to a co-operative tribunal for adjudication and relief. Parties filed their additional submissions in the second week of April. We delivered our decision on 3 May 2017 together with brief reasons for the same.

**[19]** We determined that the claims and grievances of the respondents of wrongful termination from employment, did not fall within the scope of the phrase 'touching on the business' or the word 'dispute' in s 82(1)(c) of the Act. Consequently, we concluded that the third respondent had acted ultra vires or in excess of its jurisdiction in referring the respondents' 'dispute' of wrongful termination of employment to be dealt with by the co-operative tribunal.

## THE APPELLANT'S GROUNDS FOR APPEAL

**[20]** KOSMA raised several grounds in support of its appeal. In brief, the

appeal is premised on the following:

(a) the failure of the respondents to obtain the consent of the Minister of Human Resources before referring their complaint to the co-operative tribunal in contravention of s 83 of the Act;

(b) the third respondent had acted ultra vires in the exercise of its powers under the Act in referring the matter to the co-operative tribunal, because an action for dismissal without just cause or excuse does not fall under the purview of the co-operative tribunal under s 82(1) of the Act; and

(c) the respondents were abusing the process of the court because they had submitted themselves to the jurisdiction of the industrial court, but at the stage when the testimony of the appellant's witnesses had nearly been concluded, they withdrew their case in order to start over afresh in another forum, ie the co-operative tribunal.

**[21]** KOSMA asserted that the industrial court is the proper forum to adjudicate on this dispute as it falls within the jurisdiction of the industrial court, not the co-operative tribunal. The focus of the appeal was directed primarily on this issue.

THE RESPONDENTS' REPLY

**[22]** The respondents opposed KOSMA's submission that they were estopped from saying that the industrial court had no jurisdiction to hear their complaint. They contended that they commenced their action before the industrial court because they had not been advised of the provisions of the Act, and that they had the right to elect the correct forum to channel their grievances. They further argued that the decision to refer the dispute to the co-operative tribunal was final and could not be questioned before the courts pursuant to s 82(5) of the Act.

**[23]** In opposition to KOSMA's contention that the withdrawal of their claim in the middle of the industrial court proceedings was prejudicial to KOSMA and amounted to an abuse of process, the respondents submitted that the matter had not been fully ventilated as the case was withdrawn before they had called any witnesses and before the industrial court adjudicated on the claim.

THE THIRD RESPONDENT'S CONTENTIONS

**[24]** The third respondent claimed that it was within its jurisdiction to refer the matter to the co-operative tribunal because the dispute between KOSMA

A and the respondents involved the internal affairs and management of a co-operative society. KOSMA as a co-operative society is governed and bound by the provisions of the Act. Therefore, all disputes between it and had to be brought before the third respondent to determine.

B **[25]** Further, the third respondent contended that it was empowered by the Act to give the respondents the reliefs they sought for wrongful dismissal, such as compensation or reinstatement. On the issue of the failure to obtain the consent of the Minister of Human Resources to refer the dispute to the co-operatives tribunal, the third respondent submitted that it had the power to C make a recommendation to the Minister that a tribunal be formed to hear a particular dispute.

OUR DECISION

D **[26]** Although several issues were raised in relation to this appeal, as outlined above, the primary matter that fell for consideration centred on whether the third respondent was conferred with the requisite jurisdiction under the statutory provisions of the Co-Operatives Societies Act 1993 to deal with disputes relating to wrongful termination of employment or unfair dismissal.

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**[27]** Our determination of that single issue would effectively resolve the entire dispute. If the third respondent did not have the jurisdiction or power to do so under the Act, then such referral as it had made would be ultra vires, in excess of its jurisdiction and therefore null and void. If, on the other hand, the F third respondent *was* so conferred with jurisdiction, then and only then would the other ancillary issues, such as the need for consent from the Minister of Human Resources on the part of the third respondent, and contentions of estoppel and abuse of the process of court on the part of the respondents, fall for determination.

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**[28]** We therefore proceeded on that basis in the adjudication of this appeal. As we finally concluded that the third respondent had not been conferred with the jurisdiction or the power to determine or to refer to a tribunal to determine a 'dispute' relating to wrongful termination of the employees of a co-operative H society, the ancillary issues above did not require adjudication.

ISSUE: DOES S 82(1) OF THE ACT CONFER UPON THE SURUHANJAYA KOPERASI MALAYSIA ('THE I COMMISSION') THE JURISDICTION OR POWER TO DETERMINE AND ADJUDICATE UPON A 'DISPUTE' 'TOUCHING

THE MANAGEMENT OR BUSINESS OF A CO-OPERATIVE SOCIETY' THAT ARISES BETWEEN 'THE CO-OPERATIVE SOCIETY AND ANY OFFICER OF THE CO-OPERATIVE SOCIETY'?

**[29]** For ease of reference s 82 of the Act provides as follows:

> 82 Settlement of disputes
>
> (1) *If a dispute touching the constitution, by-laws, election of officers, conduct of general meetings, management or business of a co-operative society arises —*
>
> (a) among members, past members and persons claiming through members, past members and deceased members;
>
> (b) between a member, past member or person claiming through a member, past member or deceased member, and the co-operative society, its Board, or any officer of the co-operative society;
>
> (c) *between the co-operative society or its Board and any officer of the co-operative society*; or
>
> (d) between the co-operative society and any other co-operative society, *such dispute shall be referred to the Commission for decision.*
>
> (2) ...
>
> (3) *The Commission may, on receipt of a reference under subsection (1) —*
>
> (a) decide the dispute by itself;
>
> (ba) *refer the dispute to the tribunal established under section 83; or*
>
> (b) refer the dispute to an arbitrator or arbitrators for disposal;
>
> (c) require the parties concerned to refer the dispute to a court.
>
> (4) ...
>
> (5) The decision of the Commission shall be final and shall not be called in question in any civil court.
>
> (6) ...
>
> (7) ...
>
> (8) ... (Emphasis added.)

INTERPRETATION OF S 82(1)(c)

**[30]** It is clear from a reading of s 82 that its purpose is the resolution of disputes. The type of dispute that the Commission may resolve is described in s 82(1). It serves to define the limits of a dispute falling within the purview of

A the powers of the Commission. The specific words of both definition and limitation are:

(1) 'touching the constitution, by-laws, election of officers, conduct of general meetings, management or business of a co-operative society'; and

B (2) 'arises — (a) among members, past members, ... (b) between a member, past member ... (c) between the co-operative society or ... and any officer of the co-operative society'.

C **[31]** Therefore the section envisages that firstly, the dispute must 'touch' on or relate to the constitution or by-laws of the society, the election of officers, conduct of general meetings by the society, management of the society, or the business of the co-operative society.

D **[32]** If it falls within those specific areas then it is further honed down to encompass only disputes touching on the above matters between several categories of persons. On the facts of our case, it relates to a dispute between *ex-employees or ex-officers of the co-operative society* and the *co-operative society.* The question that falls for consideration is whether this dispute falls within the categories of disputes envisaged to be resolved by the Commission.

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**[33]** Construed as a whole, the Act relates to disputes concerning the internal or domestic affairs of the society and persons who are connected to the co-operative society. This is clear from a plain reading of the section. It does not purport to cover disputes which are outside of the scope of the workings and business of the society or persons who not members, past members or heirs or legal representatives of deceased members. In other words disputes which relate to members or officers/employees of the co-operative society only, fall within the purview of this section relating to the resolution of disputes.

F

G **[34]** This is a plausible and tenable construction because the entire Act is centred on co-operative societies. Therefore disputes too must relate to, or be connected in some manner with the workings of a co-operative society.

H **[35]** It is arguable even from this plain reading that the dispute in the instant case, of unjust or wrongful termination of the officers of the co-operative society do not fall within the purview of s 82(1)(c) because:

(a) although the two respondents remain members of the co-operative society, their dispute is not in relation to their membership. In other words their grievance is not in their capacity as members. Their grievance relates to their past employment as officers;

I

(b) they are no longer officers of the co-operative society. The section makes no provision, on the face of it, for an ex-officer to have a dispute relating to unfair or wrongful dismissal adjudicated upon by a tribunal established at the behest of the Commission under s 83;

(c) their complaint relates to a cessation of their relationship/employment as officers with the co-operative society as their employer. This does not appear to fall within the section as there is no reference to past officers or ex-officers; and

(d) the instant case is distinguishable from *Arulanandan*'s case where Arulanandan continued to remain in the employment of the co-operative society. The dispute could therefore be properly categorised as falling within the two defining limbs. This is because it related to the management of the co-operative society, as the discipline of officers falls within 'management'. Secondly as a subsisting officer who had a grievance, Arulanandan could properly bring such a grievance under s 82.

**[36]** To that extent, in holding that a wider construction ought to be accorded to the words 'touching the ... management or business of a co-operative society' the decision of the Supreme Court does not in any manner alter the express definition and limitations imposed by the section.

**[37]** Even according the word 'management' a wide construction, it does not follow that an ex-officer can refer a dispute to the Commission for resolution because an ex-officer does not fall within the categories specified in s 82. Section 82(1)(c) does not make reference to an ex-officer of the co-operative society.

**[38]** Secondly, the issue of the termination of employment does not amount to a 'management' issue within a co-operative society, again because the cessation of service of an officer means that he is no longer employed by the society. Such an officer's grievance does not then touch on any management issue within the purview of the co-operative society. Rather it relates to the grievance of an employee who contends that his contract of employment has been unlawfully or wrongfully terminated. That is a matter that falls outside the ambit of the 'management' of a co-operative society, because it is no longer a domestic or internal matter. It is a matter which gives rise to a cause of action in the law of dismissal, the remedy for which is provided by statute, namely the Industrial Relations Act 1967. (Alternatively, an action may be brought in court, although the remedies under contract and/or the common law are relatively limited).

**[39]** In summary, whether a plain or purposive approach is utilised to

construe s 82(1)(c), it is apparent that a dispute such as the present does not fall within the section. It is not only a matter of construction of the words 'touching the ... management ... of a co-operative society' but equally a question of falling within the specific categories set out in the section.

**[40]** The section has to be read as a whole. When this is done it is evident that the purpose of this section is to resolve disputes relating to the affairs of a co-operative society within a limited category of persons. These categories do not include ex-officers of the society. It only covers subsisting officers. The fact that the respondents here remain members of the co-operative society does not resolve the issue because their dispute is not as members or qua members. Their dispute relates solely to their employment.

**[41]** It would follow from such an interpretation that the Commission acted outside the scope of its powers as prescribed by the Act. In other words, it acted in excess of its jurisdiction in referring the matter to the co-operative tribunal.

THE RELEVANT CASE LAW ON S 82(1)(c)

**[42]** The thrust of the case as argued before us by both parties was that in view of the Federal Court decision in *Arulanandan*'s case, this court was bound to conclude that the dispute in the instant case fell within the boundaries of s 82(1)(c).

**[43]** We have set out above the arguments that dispel this proposition. However much reliance was placed on *Arulanandan*'s case particularly that portion of the case that relied on *Madhava Rao*.

**[44]** *Madhava Rao* is a case from the Madras High Court (India) and dates back to 1954. *Arulanandan* was heard and disposed of by the Supreme Court in 1987, some 30 years later. However, in the course of adjudication of *Arulanandan*, the cases of *Co-Operative Central Bank* and *Deccan Merchant* were not made available to the Supreme Court. The effect of *Deccan Merchant* and *Co-Operative Central Bank* was to effectively overrule *Madhava Rao*.

**[45]** This issue is of relevance because of the respondents' reliance on the construction adopted in *Madhava Rao* to substantiate their stance that the Commission is indeed empowered to refer the instant dispute for resolution to a tribunal under the Act. This was also a pillar of their argument to support the proposition that the tribunal had the jurisdiction to determine matters relating to unfair dismissal, including the remedies of reinstatement and the award of backwages. The net result would be that a body set up by the Commission with the consent of the Minister would be accorded powers equivalent to that of the industrial relations court. The latter is a creature of statute, namely the

Industrial Relations Act 1967, and exercises its powers strictly within the ambit of the statute. It is misconceived to contend that the Commission, under s 82 of the Act, which deals primarily with the resolution of disputes of co-operative societies only, can arrogate to itself such extensive powers without express provision by way of legislation.

**[46]** Put another way, the tribunal lacks the jurisdiction to resolve disputes of this nature, namely the adjudication of an unfair or wrongful dismissal claim relating to the termination of employment of an employee. Neither does it possess the jurisdiction to award reliefs such as reinstatement and arrears of wages.

**[47]** What then do the cases of *Arulanandan* and the three Indian cases of *Madhava Rao*, *Co-Operative Central Bank* and *Deccan Merchant* state?

**[48]** As summarised briefly earlier, *M Arulanandan* relates to a case, where an officer of the co-operative society sought a declaration that the disciplinary action taken against him was null and void and further sought that his increment that had been barred for a period of one year be restored. The Supreme Court held that the words 'touching ... on the business of a registered society' must be given its full import, bearing in mind the object of the legislation. Taking the dictionary meaning of the word 'touching', it indicates that the dispute need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society.

**[49]** Again as we have pointed out above, the facts of the present appeal are distinguishable from *Arulanandan*, as in that case, Arulanandan remained an officer of the society and only sought relief against disciplinary action. It was not a claim for wrongful dismissal or termination, as is the case with the respondents here.

**[50]** The case of *Co-Operative Central Bank Ltd & Ors v Additional Industrial Tribunal, Andhra Pradesh, Hyderabad* 1970 AIR 245 overruled *Madhava Rao*. In doing so, reliance was placed on another Indian Supreme Court decision, namely *Deccan Merchants Co-operative Bank Ltd v Dalichand Jugraj Jain and Ors* AIR 1969 SC 1320. In the latter case, the Supreme Court narrowed the definition to be accorded to the phrase 'touching on the business'. It was pointed out that there was a limitation to the word 'dispute' in that it only covers disputes which are capable of being resolved by the registrar or his nominee.

**[51]** *Deccan Merchant* dealt with a dispute between a landlord society and tenant. The Indian Supreme Court held that it was doubtful that the word

'dispute' in the relevant legislation would include such a dispute. There was specific legislation dealing with the dispute and the court therefore felt that it was not within the contemplation of the Bombay Co-Operative Societies Act 1925 that such a dispute be referred to the registrar.

**[52]** In like manner in the present case, as we have pointed out earlier, we have specific legislation dealing with unfair dismissal, namely the Industrial Relations Act 1967. The operation of the Industrial Relations Act 1967 has not been expressly excluded by the Co-Operative Societies Act 1993.

**[53]** Following *Deccan Co-Operative*, we are of the view that the claims and grievances of the respondents as set out in their statement of case do not fall within the scope of the phrase 'touching ... on the management or business' or the word 'dispute' in s 82(1)(c) of our Co-Operative Societies Act 1993. This is because 'touching ... on the management or business' does not cover a dispute relating to an officer of a co-operative society who has been dismissed from service with the society for misconduct. In *Arulanandan* there was no question of dismissal. It was not, to our minds, within the contemplation of the Legislature to confer such jurisdiction on the Co-Operative Societies Commission. The jurisdiction to resolve disputes such as the present case which deals with a claim of unfair or wrongful dismissal from a co-operative society falls within the regime of the Industrial Relations Act 1967.

**[54]** Finally, with respect to the respondents' ancillary claim for defamation, this court held in *On bin Long & Ors v Romeli bin Dollah* [2014] MLJU 1914; [2014] 7 CLJ 371 that defamation did not fall within the ambit of s 82(1) of the Co-Operative Society Act 1993, and we adhere to that decision, with respect.

**[55]** For the foregoing reasons we were unable to conclude as the learned High Court judge did, that the decision of the Commission fell within the scope of its jurisdiction under the Act. On the contrary we concluded that it was made in excess of jurisdiction and to that extent was tainted by illegality and/or irrationality.

**[56]** As such, curial intervention was merited and the appeal allowed with costs. The decision of the High Court was set aside and we allowed the application for judicial review.

**[57]** We further ordered that the costs of RM33,000 paid to the respondents in the High Court be paid to the appellant within 14 days of service of this order, subject to allocatur. The deposit was refunded to the appellant.

*Appeal allowed.*

Reported by Afiq Mohamad Noor